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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

GEORGE MARCIAL,

Defendant.

22 Cr. 208 (AT)

PROTECTIVE ORDER

Upon the application of the United States of America, with the consent of the undersigned counsel, the Court hereby finds and orders as follows:

1. Sensitive Material. The Government has made and will make disclosure to the defendant of documents, objects, and/or information, including electronically stored information (“ESI”), as a courtesy, or pursuant to Federal Rule of Criminal Procedure 16, 18 U.S.C. § 3500, and the Government’s general obligation to produce exculpatory and/or impeachment material in a criminal case. Certain of the material that the Government will produce may include that which (1) affects the privacy and confidentiality of individuals and entities; and/or (2) is not authorized to be disclosed to the public or disclosed beyond that which is necessary for the defense of this criminal case. Discovery materials produced by the Government to the defendant or his counsel that are either (1) designated in whole or in part as “Sensitive” by the Government in emails or communications to defense counsel, or (2) that include a Bates or other label stating “Sensitive,” shall be deemed “Sensitive Material.”

2. Attorney’s Possession Only (“APO”) Material. Certain discovery materials that the Government will produce may raise a particular risk of affecting the privacy and confidentiality of victims or witnesses. Discovery materials produced by the Government to the defendant or his counsel that are either (1) designated in whole or in part as “Attorney’s Possession Only” by the

Government in emails or communications to defense counsel, or (2) that include a Bates or other label stating “Attorney’s Possession Only,” shall be deemed “APO Material.” Any material designated as APO Material shall also be deemed Sensitive Material.

NOW, THEREFORE, FOR GOOD CAUSE SHOWN, IT IS HEREBY ORDERED:

3. Sensitive Material shall not be disclosed by the defendant or defense counsel, including any successor counsel (“the defense”), other than as set forth herein, and shall be used by the defense solely for purposes of defending this action. The defense shall not post any Sensitive Material on any Internet site or network site to which persons other than the parties hereto have access, and shall not disclose any Sensitive Material to the media or any third party except as set forth below.

4. Sensitive Material may be disclosed by counsel, consistent with the terms set forth above, to:

- (a) The defendant for purposes of defending this action;
- (b) Personnel for whose conduct counsel is responsible, *i.e.*, personnel employed by or retained by counsel, as needed for purposes of defending this action; or
- (c) Prospective witnesses for purposes of defending this action.

5. Any APO Material received by the defense shall be maintained in a safe and secure manner solely by the defendant’s counsel; shall not be possessed by the defendant, except in the presence of the defendant’s counsel; and shall not be disclosed in any form by the defendant or his counsel except as set forth herein.

6. The Government may authorize, in writing, disclosure of Sensitive Material or APO Material beyond that otherwise permitted by this Order without further Order of this Court.

7. This Order does not prevent the disclosure of any Sensitive Material or APO Material in any hearing or trial held in this action, or to any judge or magistrate judge, for purposes of this action. All public filings should comply with the privacy protection provisions of Fed. R. Crim. P. 49.1 and this district's ECF Privacy Policy (<https://www.nysd.uscourts.gov/sites/default/files/pdf/egovtact042005.pdf>).

8. At any time, the defense may seek leave from the Government to alter the designations for materials designated as Sensitive Material or APO Material. The Government will promptly review such Requested Material and (1) consent to the requested designation alteration or sharing of the material; or (2) provide the defense with an explanation as to why the Requested Material cannot be designated or shared in the manner requested, so as to facilitate the Court's consideration of any disputes regarding the Requested Material. The Government's designation of material as Sensitive Material or APO Material will be controlling absent contrary order of the Court.

9. Except for Sensitive Material and APO Material that has been made part of the record of this case, and subject to defense counsel's obligation to retain client files under the Rules of Professional Conduct, all documents subject to this Order must be destroyed or returned to the Government's attorneys at such time as they are not needed in this action, at the end of the criminal proceedings (including any appeal and related applications for habeas corpus or any other collateral relief), or upon order of the Court, whichever occurs first.

10. The defense shall provide a copy of this Order to prospective witnesses and persons retained by counsel to whom the defense intends to disclose Sensitive Material or APO Material. All such persons shall be subject to the terms of this Order if they thereafter choose to review such

material. Defense counsel shall maintain a record of what Sensitive Material and APO Material has been disclosed to which such persons.

11. This Order places no restriction on a defendant's use or disclosure of ESI or other information that originally lawfully belonged to the defendant.

AGREED AND CONSENTED TO:

DAMIAN WILLIAMS
United States Attorney

By: Madison Reddick Smyser
Madison Reddick Smyser
Assistant United States Attorney

Date: 9/26/2022


Hannah McCrea, Esq.
Counsel for George Marcial

Date: 9/26/22

SO ORDERED:

Dated: New York, New York
September 26, 2022



HONORABLE ANALISA TORRES
UNITED STATES DISTRICT JUDGE